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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re AARON W., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A. D.,

Defendant and Appellant.

B253198

(Los Angeles County
Super. Ct. No. DK01494)

APPEAL from orders of the Superior Court of Los Angeles County,
Marguerite Downing, Judge. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother, A.D., appeals from the orders of the juvenile court declaring her son Aaron W. (age 2.5 years) a dependent (Welf. & Inst. Code, § 300, subds. (a) & (b))¹ and removing him from mother's custody (§ 361, subd. (c)(1)). As a preponderance of the evidence supports the orders, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (the Department) became involved with this family in September 2013, when mother was arrested. The Department reported the following events lead to the arrest: Mother became angry at her twin sister Alicia D. for responding to Aaron's crying. She took the child from Alicia and soon started an argument with Alicia's boyfriend, Kenneth J. Mother was carrying Aaron in her arms when she confronted Kenneth. Kenneth pushed her while she was holding the baby. Mother and Alicia live in the same apartment building; mother lives in apartment 5 and Alicia in apartment 4. Mother went to her neighbor's apartment to calm down and then vandalized Alicia's and Kenneth's car with a baseball bat and busted a window to her apartment. Later, mother threw rocks at Kenneth, injuring his forehead. Alicia called the police who arrested mother and charged her with assault with a deadly weapon and vandalism.

Mother told the investigating social worker that in June 2013, she and Aaron's father² engaged in a verbal altercation during which father hit, slapped, and pushed mother. Also in 2013, mother was involved in fights with Alicia and the father of her unborn child resulting in police involvement.

Mother was convicted in 2006, before Aaron was born, of felony assault with a deadly weapon in an incident similar to the one that triggered Aaron's dependency here. Mother stabbed her victim with a knife and was sentenced to five years in prison. She lost the custody of Aaron's older siblings as a result of the 2006 incident. Mother also

¹ All statutory references are to the Welfare and Institutions Code.

² Aaron's father is not a party to this appeal.

admitted having a history of marijuana use since the age of 16, and methamphetamine use from 2004 to 2011.

The Department detained Aaron but was unable to locate a relative willing to take him just then. The Department categorized the family as “high risk” for future abuse and determined that detention was the only means of ensuring Aaron’s safety. The juvenile court ordered Aaron detained from his parents. Mother was released from jail.

By the time of the jurisdiction report, mother denied that she and father had been involved in a violent altercation in Aaron’s presence and denied telling the emergency response social worker there had been domestic violence in the past. Nonetheless, mother did admit filing a battery report against Alicia because the two had been in a fight, and did admit fighting with the father of her unborn child and calling the police.

The Department filed a petition under section 300, subdivisions (a) and (b). As amended, the petition alleged that in June 2013, mother and father engaged in a violent altercation in the child’s presence in which father repeatedly struck mother and pushed her (counts a-1 and b-1); mother was incarcerated in September 2013 for assault with a deadly weapon and vandalism and failed to make an appropriate plan for the child’s care and supervision (count b-2); and mother has a history of assaultive behavior and engaging in violent altercations and Aaron was exposed to one such occasion (count b-3).

The Department filed the follow-up police report of the September 2013 incident corroborating much of the information contained in the Department’s jurisdiction and detention reports. In addition to the prior criminal history mentioned, the police also verified that mother had a prior arrest for assault with a deadly weapon.

The Department and mother held a Team Decision Making meeting (TDM) during which mother became upset and hostile when shown the follow-up police report. However, she was eventually able to calm down and later entered into a safety plan with the Department in which she agreed to participate in anger management, parenting classes, and individual counseling, and that Aaron would remain detained from her.

Mother did not appear at the adjudication hearing. After hearing argument, the court sustained the amended petition (§ 300, subds. (a) & (b)). Turning to the

disposition, the juvenile court removed Aaron from mother's custody (§ 361, subd. (c)). The court ordered reunification services and awarded mother a minimum of two hours of monitored visits twice weekly. Mother's attorney objected to the case plan. Counsel stated, "If anything, this is an issue *she needs to learn how to deal with her anger*. This is an issue that has been brought up that she's not appropriately parenting her child." (Italics added.) Mother did not object to the removal order. Mother filed her timely appeal.

CONTENTIONS

Mother contends the evidence does not support the findings made in the jurisdictional and disposition orders.

DISCUSSION

1. *Sufficient evidence supports the order declaring Aaron a dependent under section 300, subdivision (b) based on count b-3.*

The order sustaining a petition must be supported by a preponderance of the evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) On appeal, we are guided by the substantial-evidence standard: "We review the record to determine whether there is any substantial evidence, contradicted or not, which supports the court's conclusions." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) We will affirm the jurisdictional order if any of the juvenile court's grounds is supported by substantial evidence. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 ["[a] reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds"]; see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

A child falls within the jurisdiction of the juvenile court under section 300, subdivision (b) if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." There are three elements to the definition under subdivision (b) of section 300: " '(1) neglectful conduct by the parent in one of the specified forms [in subdivision (b), such as a parent's failure to adequately supervise or protect a minor]; (2) causation; and (3) "serious physical harm or

illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.]” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)

The evidence supports the allegations in count b-3, namely that mother “has a history of assaultive behavior and engaging in violent altercations including, but not limited to, throwing [a] rock, vandalizing a vehicle, busting unrelated male, Kenneth J[.]’ head. Further, on or about 9/22/13 the child, Aaron W[.] was exposed to a violent episode in which [*sic*] throwing rocks and vandalizing a vehicle.” Mother admitted she engaged in a physical altercation with father in June 2013 and stated she was carrying Aaron in her arms when she confronted Alicia’s boyfriend and he pushed her. Alicia stated that mother vandalized Kenneth’s car with a baseball bat and later threw rocks at Kenneth’s head causing injury. She also stated mother “busted out” her living room window. The juvenile court could reasonably infer that Aaron was with mother in her apartment when she broke her own window. The record also contains reports that police have responded to fights between mother and her sister and mother’s boyfriend. Mother admitted having filed a battery report against her sister.

Mother contends that the juvenile court abused its discretion in sustaining the petition because it failed to consider *all* of the evidence.³ However, “an appellate court must presume that the decision of the trial court is correct. ‘ “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” ’ [Citation.]” (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.) “[T]he issue is whether there is evidence, *contradicted or uncontradicted*, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, *resolving conflicts in the evidence in favor of that order*, and giving the evidence

³ To support her suggestion that the abuse of discretion standard applies in this case to the sustaining of a petition, mother cites *Schlumpf v. Superior Court* (1978) 79 Cal.App.3d 892 at page 901. *Schlumpf* is utterly irrelevant as the issue there was whether California or Wyoming was a more convenient forum for modifying a child custody order. Here, the question is simply whether the evidence supported the juvenile court’s finding that the allegations of count b-3 in the petition were true.

reasonable inferences. . . . Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings. [Citations.]” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 450–451, italics added; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) “Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Viewing the record through the lens of the substantial evidence test, it contains ample evidence to support the court’s finding that the allegations in count b-3 were true.

We reject mother’s next argument that the juvenile court abused its discretion in failing to consider her denial of some of the allegations and “the evidence of bias” on the part of Alicia and Kenneth. “It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 52.) The court necessarily disbelieved mother’s denials while crediting Alicia’s and Kenneth’s statements. “We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*Id.* at pp. 52-53.)

Mother argues that the juvenile court considered the 2006 police report of her prior similar arrest even after it sustained her objection to the report’s admissibility. At the adjudication hearing, mother challenged the police report on the grounds counsel had just received it that day. The court offered counsel the opportunity to postpone the hearing. Rather than to take a continuance to read the report, mother’s attorney stated, “We can handle it now. It’s fine. Just note my objection.” Although the court sustained mother’s objection to the admission of the police report on the basis that it was stale, it later “remov[ed] the objection.” Mother did not renew her objection and so the report was admitted into evidence and properly considered. Even without the police report, however, the record as described above contains sufficient evidence to support the challenged allegation.

Mother argues that she never placed Aaron at risk of harm. She argues “[t]here is no evidence that Aaron witnessed the event or was negatively affected or injured by it.” To the contrary, the Department’s detention report contains mother’s statement that she was carrying Aaron at the time she started a fight with Kenneth. Notwithstanding this evidence that Aaron was present, the child need not have witnessed, nor have been “negatively affected” by the violence to be defined by section 300, subdivision (b). “[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) “Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) All of the participants here live in the adjacent apartments in the same building. Mother has a long record, spanning at least seven years, of unrestrained, violent behavior, causing physical harm to those with whom she fights, including her sister and her own boyfriends. These fights lead to police involvement, twice to mother’s arrest for assault with a deadly weapon, and once to her incarceration and loss of custody of Aaron’s older siblings. The neglect here arises from mother’s failure to protect Aaron from encountering her own repeated acts of violence on others in her family. (*In re Heather A.*, *supra*, at p. 194.) As mother’s violence is still unresolved, the evidence more than supports the juvenile court’s implied conclusion that the risk of harm was likely to recur absent the court’s intervention. The juvenile court “need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165-166.)

2. *Sufficient evidence supports the dispositional order removing Aaron from mother’s custody.*

“Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of

harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on *averting* harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances. [Citation.]” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917, italics added.)

The burden of proof required for the disposition findings is clear and convincing evidence. (§ 361, subd. (c) [disposition findings by clear and convincing evidence].) Nonetheless, we review the disposition order for substantial evidence. (See *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880–881 [“The ‘clear and convincing’ standard . . . is for the edification and guidance of the trial court and not a standard for appellant review. [Citations.] ‘ “The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citations.]’ ”]; *In re Christopher R., supra*, 225 Cal.App.4th at p. 1216, fn. 4.)

Here, a preponderance of the evidence supports the juvenile court’s finding by clear and convincing evidence that there was a substantial risk to Aaron’s physical or emotional well-being if he were returned to mother’s care. (§ 361, subd. (c).) Thankfully, Aaron has not been harmed yet. However, mother has a long, unresolved history of violent and physically assaultive behavior that allows her to disregard the safety and well-being of her own children. We have already concluded that Aaron was at substantial risk of harm from mother’s violent outbursts, which have harmed others in their wake. That is prima facie support for the removal order here. Additionally, mother has lost custody of her older children because of eerily similar conduct. She denies and minimizes her behavior. She has not taken any steps to reduce or eliminate her longstanding unrestrained violent propensity. Her own attorney recognized that mother

“needs to learn how to deal with her anger.” The juvenile court had ample evidence on which to find that Aaron could not be safely returned to mother’s care.

DISPOSITION

The orders appealed from are affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.